

United States District Court
Eastern District of California

Anthony L. Patton,

Plaintiff,

vs.

R. S. Johnson, et al.,

Defendants.

No. Civ. S 04-1893 FCD PAN P

Order

-oOo-

Plaintiff is a prisoner, without counsel, seeking leave to commence an action against prison officials for civil rights violations in forma pauperis pursuant to 28 U.S.C. § 1915(a). This proceeding was referred to this court by Local Rule 72-302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff's declaration makes the showing required by 28 U.S.C. § 1915(a)(1) and (2).

Pursuant to 28 U.S.C. § 1915(b)(1), plaintiff must pay the \$150 filing fee required by 28 U.S.C. § 1914(a) (1996).

Plaintiff must make monthly payments of 20 percent of the

1 preceding month's income credited to his trust fund account. 28
2 U.S.C. § 1915(b)(2). The agency having custody of plaintiff
3 shall forward payments from plaintiff's account to the clerk of
4 the court each time the amount in the account exceeds \$10 until
5 the filing fee is paid.

6 Congress burdens this court with the task of scrutinizing,
7 at the outset of the litigation, each complaint in "a civil
8 action in which a prisoner seeks redress from a governmental
9 entity or officer or employee of a governmental entity." 28
10 U.S.C. § 1915A(a). Under that rigorous review the court must
11 identify cognizable claims or dismiss the complaint, or any
12 portion of it, if it is frivolous, malicious, fails to state a
13 claim upon which relief may be granted, or seeks monetary relief
14 from a defendant who is immune from such relief.¹ The court's
15 affirmative duty to screen prisoner plaintiffs' pleading makes
16 such cases unique.

17 The complaint in this action is so obscure that the court
18 cannot reasonably discharge its responsibility under § 1915A(a)
19 until plaintiff first satisfies his own duty to comply with the
20 pleading requirements set forth in Rule 8 of the Federal Rules of
21 Civil Procedure. This rule requires the pleader to set
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25 ¹ What is more, the court cannot require defendants to reply to such
26 complaints without first determining plaintiff has a reasonable opportunity to
prevail on the merits of his claims. 42 U.S.C. § 1997e(g).

1 forth his averments in a simple, concise, and direct manner.²
2 The degree of simplicity and conciseness required depends on the
3 subject matter of the litigation, the nature of the claims or
4 defenses presented and the number of parties involved. Wright &
5 Miller, Federal Practice & Procedure, vol. 5 § 1281 & n. 12
6 (1990) (explaining that an antitrust or copyright pleading due to
7 its complexity, must be pleaded with more detail than a simple
8 negligence complaint).³

9 In reviewing the complaint to determine if it states a claim
10 for relief, the court will construe plaintiff's pleading
11 liberally. See Haines v. Kerner, 404 U.S. 519 (1972). The court
12 will not dismiss a complaint without first telling plaintiff what
13 the deficiencies are and giving him an opportunity to cure them.
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16 ² A party need only plead in terms that are sufficient to provide the
17 necessary notice to his adversary, and evidentiary material supporting the
18 general statements normally should not be set out in the pleadings but rather
19 should be left to be brought to light during the discovery process. Wright &
20 Miller § 1281 Rule 8 p. 519.

21 ³ In this regard, the mere fact that this action falls into the
22 exclusive category the court must screen under § 1915A dictates a strict
23 interpretation of whether the pleading is sufficiently short and plain. The
24 undersigned has over 200 such cases on his docket at any one time. One
25 poorly-pleaded, 30-page prisoner complaint, multiplied by 200, yields 6,000
26 pages of material this court has an affirmative duty to review and screen (not
to mention the frequency with which a pro se prisoner's pleading must go
through amendment before service of process). Both the defendants and the
court must select the relevant material from the mass of verbiage. "[T]he law
does not require nor does justice demand that a judge must grope through
[thousands of] pages of irrational prolix and redundant pleadings, containing
matters foreign to the issue involved . . . in order to determine the grounds
for the [plaintiff's] complaint." Passic v. Michigan, 98 F. Supp. 1015, 1016-
17 (D.C. Mich. 1951). The court's transition to a paperless record system
greatly exacerbates the problem.

1 Noll v. Carlson, 809 F.2d 1446 (9th Cir. 1987); Eldridge v.
2 Block, 832 F.2d 1132, 1136 (9th Cir. 1987).

3 But before undertaking to determine whether the complaint
4 may have merit, the court may insist upon compliance with its
5 rules. McNeil v. United States, 508 U.S. 106 (1993) (federal
6 rules apply to all litigants, including prisoners lacking access
7 to counsel); Crawford-El v. Britton, 523 U.S. 574 (1998)
8 (encouraging "firm application" of federal rules in prisoner
9 cases).

10 Plaintiff's complaint presents a blanket challenge to
11 conditions of confinement in a new "SHU" unit, without linking
12 defendants to the constitutional deprivation, and claims some
13 defendants have made plaintiff a "target of retribution." The
14 pleading violates Rule 8 of the Federal Rules of Civil Procedure.

15 In reviewing plaintiff's complaint, the court is required to
16 guess who is being sued for what. If the pleading were served in
17 its present form it would not give defendants fair notice of the
18 claims against them and, indeed, their best guess about the
19 nature of plaintiff's complaint may be quite different than the
20 court's. See McHenry v. Renne, 84 F.3d 1172 (9th Cir. 1996)
21 (court should be able to read the complaint in minutes, not
22 hours, and may consider the rights of defendants to be free from
23 costly and harassing litigation and other litigants waiting their
24 turns to have other matters resolved); see also Nevijel v. North
25 Coast Life Insurance Co., 651 F.2d 671 (9th Cir. 1971); Von
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1 Poppenheim v. Portland Boxing & Wrestling Commission, 442 F.2d
2 1047 (9th Cir. 1971).

3 Plaintiff's task is modest. He is not required to identify
4 the law that makes the alleged conduct wrong. A pleader is free
5 to use his own language to state, simply and directly, the wrong
6 that has been committed, and clearly explain how each state actor
7 identified as a defendant was involved and what relief plaintiff
8 requests of each defendant. Jones v. Community Redevelopment
9 Agency of the City of Los Angeles, 733 F.2d 646 (9th Cir. 1984);
10 Johnson v. Duffy, 588 F.2d 740 (9th Cir. 1978).

11 It is sufficient, for example, for a prisoner who claims the
12 conditions of his imprisonment violate the Eighth Amendment
13 prohibition against cruel and unusual punishment to allege that
14 an identified state actor denied to plaintiff some specifically
15 identified basic human need such as food, clothing, shelter,
16 medical care or safety, knowing that plaintiff thereby faced a
17 substantial risk of serious harm and disregarded that risk by
18 failing to take or cause to be taken reasonable measures to abate
19 the risk that were within his or her power. See Farmer v.
20 Brennan, 511 U.S. 825 (1994); Helling v. McKinney, 509 U.S. 25
21 (1993). (On the other hand, harsh and uncomfortable conditions
22 are expected; convicted prisoners are entitled only to the
23 minimal civilized measure of life's necessities and even inhumane
24 conditions, that is risks so grave even to convicted felons that
25 they are repugnant to those who have consigned the plaintiff to
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1 prison, do not amount to punishment if the state actor is
2 powerless to change them or does not know of them.)

3 "Within the prison context, a viable claim of First
4 Amendment retaliation entails five basic elements: (1) An
5 assertion that a state actor took some adverse action against an
6 inmate (2) because of (3) that prisoner's protected conduct, and
7 that such action (4) chilled the inmate's exercise of his First
8 Amendment rights, and (5) the action did not reasonably advance a
9 legitimate correctional goal." Rhodes v. Robinson, 408 F.3d 559,
10 567 (9th Cir. 2005) (citations omitted). In assessing the fourth
11 requirement, the court at the pleading stage should ask "'whether
12 an official's acts would chill or silence a person of ordinary
13 firmness from future First Amendment activities.'" Id. at 568,
14 quoting Mendocino environmental Center v. Mendocino County, 192
15 F.3d 1283, 1300 (9th Cir. 1999).

16 Plaintiff's complaint is dismissed with leave to amend. If
17 he wishes to continue this litigation he must file an amended
18 complaint.

19 Plaintiff's amended complaint must adhere to the following
20 requirements:

21 A complaint must contain a caption including the name of the
22 court and the names of all parties. Fed. R. Civ. P. 10(a).

23 More than one claim against a single defendant may be joined
24 in the same action. Fed. R. Civ. P. 18(a).

1 Claims against different defendants may be joined in the
2 same action only if the claims arise from the same transactions
3 or occurrences. Fed. R. Civ. P. 20(a).

4 Each claim founded upon a separate transaction or occurrence
5 must be set apart as a "separate count." Within each count, the
6 circumstances that give rise to the claim must be alleged in
7 separate, numbered paragraphs. Fed. R. Civ. P. 10(b).

8 These allegations must be short and plain, simple and
9 direct and describe the relief plaintiff seeks. Fed. R. Civ. P.
10 8(a); Swierkiewicz v. Sorema N.A., 534 U.S. 506, 514 (2002);
11 Galbraith v. County of Santa Clara, 307 F.3d 1119, 1125 (9th Cir.
12 2002).⁴

13 Plaintiff must sign the complaint. Fed. R. Civ. P. 11(a).

14 The amended complaint must be complete in itself without
15 reference to plaintiff's original complaint. Local Rule 15-220.
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18 ⁴ Negligence is not actionable under 42 U.S.C. § 1983. However, to
19 illustrate the simplicity and brevity of statement contemplated by the rules
(see Fed. R. Civ. P. 84), this example of a complaint based upon an automobile
accident is provided:

20 1. Allegation of jurisdiction.

21 2. On June 1, 1936, in a public highway called Boylston Street in
22 Boston, Massachusetts, defendant negligently drove a motor vehicle
against plaintiff who was then crossing said highway.

23 3. As a result plaintiff was thrown down and had his leg broken
and was otherwise injured, was prevented from transacting his business,
24 suffered great pain of body and mind, and incurred expenses for medical
attention and hospitalization in the sum of one thousand dollars.

25 Wherefore plaintiff demands judgment against defendant in the sum
of ____ dollars and costs.

26 Form 9, Appendix of Forms to the Federal Rules of Civil Procedure.

1 Plaintiff is admonished that a prisoner pursuing civil
2 rights claims without counsel, like all other litigants, is
3 required to obey the court's orders, including an order to amend
4 his pleading. Ferdik v. Bonzelet, 963 F.2d 1258 (9th Cir. 1992);
5 Pagtalunan v. Galaza, 291 F.3d 639 (9th Cir. 2002). His failure
6 to obey the court's orders and the local and federal rules and
7 meet his responsibilities in prosecuting this action may justify
8 dismissal, including dismissal with prejudice. Ferdik, 963 F.2d
9 1258 (affirming dismissal with prejudice for pro se prisoner's
10 failure to comply with order requiring filing of amended civil
11 rights complaint); Pagtalunan, 291 F.3d 639 (affirming dismissal
12 with prejudice for pro se prisoner's failure to comply with order
13 requiring filing of amended habeas petition); Moore v. United
14 States, 193 F.R.D. 647 (N.D. Cal. 2000) (denying motion for leave
15 to file third amended complaint and dismissing action with
16 prejudice for pro se plaintiff's failure to comply with Rule 8);
17 Franklin v. Murphy, 745 F.2d 1221, 1232-33 (9th Cir. 1984)
18 (affirming dismissal with prejudice for pro se prisoner's failure
19 to prosecute); Carey v. King, 856 F.2d 1439 (9th Cir. 1988)
20 (affirming dismissal without prejudice for pro se prisoner's
21 failure to comply with local rule requiring he notify the court
22 of any change of address).

23 Accordingly, the court hereby orders that:

24 1. Plaintiff's request to proceed in forma pauperis is
25 granted. Plaintiff must pay a \$150 filing fee.

26 2. The April 12, 2005, order to show cause is discharged.

3. Plaintiff's complaint is dismissed with leave to amend within 60 days. Plaintiff shall file an original and one copy of his amended complaint, which must bear the docket number assigned to this case and be titled "Amended Complaint." Failure to comply with this order may result in a recommendation the action be dismissed and, if warranted, that dismissal will be with prejudice.

Dated: June 29, 2005.

/s/ Peter A. Nowinski

PETER A. NOWINSKI

Magistrate Judge